
HOUSE BILL 3174

State of Washington

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By Representatives Kirby, Haler, Chase, Linville, Hasegawa, Fromhold, Sullivan, Pettigrew, Skinner, Roach, Orcutt, Morrell, Ericks, Kelley, Dunn, Kenney, Santos, and Ormsby

Read first time 01/23/08. Referred to Committee on Insurance, Financial Services & Consumer Protection.

1 AN ACT Relating to incentives for financial institutions to
2 encourage investment in qualified community development entities;
3 adding a new section to chapter 82.04 RCW; creating a new section; and
4 providing an expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.04 RCW
7 to read as follows:

8 (1) The definitions in this subsection (1) apply throughout this
9 section unless the context clearly requires otherwise.

10 (a) "Applicable percentage" means zero percent for each of the
11 first two credit allowance dates, twelve percent for the third and
12 fourth credit allowance dates, and fifteen percent for the fifth credit
13 allowance date.

14 (b) "Credit allowance date," with respect to any qualified equity
15 investment means:

16 (i) The date on which such investment is initially made; and

17 (ii) Each of the six anniversary dates of such date thereafter.

18 (c) "Direct tracing" means the tracking, by accepted accounting

1 methods, of the proceeds of qualified equity investments into qualified
2 low-income community investments.

3 (d) "Long-term debt security" means any debt instrument issued by
4 a qualified community development entity, at par value or a premium,
5 with an original maturity date of at least seven years from the date of
6 its issuance, with no acceleration of repayment, amortization, or
7 prepayment features prior to its original maturity date, and with no
8 distribution, payment, or interest features related to the
9 profitability of the qualified community development entity or the
10 performance of the qualified community development entity's investment
11 portfolio. The foregoing in no way limits the holder's ability to
12 accelerate payments on the debt instrument in situations where the
13 issuer has defaulted on covenants designed to ensure compliance with
14 this section or Title 26 U.S.C. Sec. 45D of the federal internal
15 revenue code of 1986, as amended.

16 (e) "Purchase price" means the amount paid to the issuer of a
17 qualified equity investment for such qualified equity investment.

18 (f) "Qualified active low-income community business" is defined as
19 provided in Title 26 U.S.C. Sec. 45D of the federal internal revenue
20 code of 1986, as amended, as of January 1, 2008. However, any business
21 that derives or projects to derive fifteen percent or more of its
22 annual revenue from the rental or sale of real estate may not be
23 considered to be a qualified active low-income community business.

24 (g) "Qualified community development entity" is defined as provided
25 in Title 26 U.S.C. Sec. 45D of the federal internal revenue code of
26 1986, as amended, as of January 1, 2008, if such entity has entered
27 into an allocation agreement with the community development financial
28 institutions fund of the United States treasury department with respect
29 to credits authorized by Title 26 U.S.C. Sec. 45D of the federal
30 internal revenue code of 1986, as amended, which includes the state of
31 Washington within the service area set forth in such allocation
32 agreement.

33 (h) "Qualified equity investment" means:

34 (i) Any equity investment in, or long-term debt security issued by,
35 a qualified community development entity that:

36 (A) Is acquired after the effective date of this act at its
37 original issuance solely in exchange for cash;

1 (B) Has at least eighty-five percent of its cash purchase price
2 used by the issuer to make qualified low-income community investments;
3 and

4 (C) Is designated by the issuer as a qualified equity investment
5 under this subsection (1)(h)(i)(C) and is certified by the department
6 as not exceeding the limitation contained in subsection (4) of this
7 section.

8 (ii) "Qualified equity investment" includes any qualified equity
9 investment that does not meet the provisions of (h)(i) of this
10 subsection, if such investment was a qualified equity investment in the
11 hands of a prior holder.

12 (i) "Qualified low-income community investment" means any capital
13 or equity investment in, or loan to, any qualified active low-income
14 community business. With respect to any one qualified active low-
15 income community business, the maximum amount of qualified low-income
16 community investments made in such business, on a collective basis with
17 all of its affiliates, must be ten million dollars whether issued to
18 one or several qualified community development entities.

19 (j) "Tax credit" means a credit against the tax otherwise due under
20 this chapter.

21 (k) "Taxpayer" means any individual or entity subject to the tax
22 imposed under this chapter.

23 (2) A taxpayer that makes a qualified equity investment is entitled
24 to a tax credit against the tax otherwise imposed under this chapter as
25 follows:

26 (a) On each credit allowance date of a qualified equity investment,
27 the taxpayer or subsequent holder of the qualified equity investment,
28 is entitled to a tax credit during the taxable year, which includes the
29 credit allowance date;

30 (b) The tax credit amount is equal to the applicable percentage
31 multiplied by the purchase price paid to the issuer of such qualified
32 equity investment; and

33 (c) The amount of the tax credit claimed may not exceed the amount
34 of the taxpayer's tax liability under this chapter for the tax year for
35 which the tax credit is claimed.

36 (3) No tax credit claimed under this section is refundable or
37 saleable on the open market. Tax credits earned by a partnership,
38 limited liability company, s-corporation, or other pass-through entity

1 may be allocated to the partners, members, or shareholders of such
2 entity for their direct use in accordance with the provisions of any
3 agreement among such partners, members, or shareholders. Any amount of
4 tax credit that the taxpayer is prohibited from claiming under this
5 section in a taxable year may be carried forward to any of the
6 taxpayer's five subsequent taxable years.

7 (4) The department must limit the monetary amount of qualified
8 equity investments permitted under this section to a level necessary to
9 limit tax credit utilization at no more than fifteen million dollars of
10 tax credits in any fiscal year. The limitation on qualified equity
11 investments must be based on the anticipated utilization of credits
12 without regard to the potential for taxpayers to carry forward tax
13 credits to later tax years.

14 (5) The issuer of the qualified equity investment must certify to
15 the department the anticipated dollar amount of such investments to be
16 made in this state during the first twelve-month period following the
17 initial credit allowance date. If on the second credit allowance date,
18 the actual dollar amount of such investments is different than the
19 amount estimated, the department shall adjust the credits arising on
20 the second allowance date to account for such difference.

21 (6)(a) Provided that the proceeds of a qualified equity investment
22 are invested completely in qualified low-income community investments
23 in Washington state, the purchase price, for the purpose of calculating
24 the credit created by this act, is equal to one hundred percent of the
25 qualified equity investment, regardless of the location of investments
26 made with the proceeds of other qualified equity investments issued by
27 the same community development entity.

28 (b) To the extent a portion of a qualified equity investment is not
29 invested in Washington state, the purchase price is reduced by the same
30 ratio in (a) of this subsection, independently of the location of
31 investments made with proceeds of other qualified equity investments
32 issued by the same community development entity. In such case, the
33 burden is on the community development entity to establish the extent
34 to which the qualified equity investments are fully invested in
35 Washington state, either by establishing that the community development
36 entity itself invests exclusively in Washington state, or otherwise
37 establishing, through direct tracing, the portion of a qualified equity
38 investment invested solely in Washington state.

1 (7) The department must recapture, from the taxpayer that claimed
2 the credit on a return, the tax credit allowed under this section if:

3 (a) Any amount of the federal tax credit available with respect to
4 a qualified equity investment that is eligible for a tax credit under
5 this section is recaptured under Title 26 U.S.C. Sec. 45D of the
6 federal internal revenue code of 1986, as amended. In such case the
7 department's recapture must be proportionate to the federal recapture
8 with respect to such qualified equity investment; or

9 (b) The issuer redeems or makes principal repayment with respect to
10 a qualified equity investment prior to the seventh anniversary of the
11 issuance of such qualified equity investment. In such case the
12 department's recapture must be proportionate to the amount of the
13 redemption or repayment with respect to the qualified equity
14 investment, except as provided otherwise in subsection (8) of this
15 section.

16 (8) The provisions of subsection (7)(b) of this section do not
17 apply and an investment will be considered held by an issuer, even if
18 the investment has been sold or repaid, when the issuer reinvests an
19 amount equal to the capital returned to or recovered by the issuer from
20 the original investment, exclusive of any profits realized, in another
21 qualified low-income community investment within twelve months of the
22 receipt of such capital. An issuer may not be required to reinvest
23 capital returned from qualified low-income community investments after
24 the sixth anniversary of the issuance of the qualified equity
25 investment, the proceeds of which were used to make the qualified low-
26 income community investment, and the qualified low-income community
27 investment shall be considered held by the issuer through the seventh
28 anniversary of the qualified equity investment's issuance.

29 (9) The department may develop rules to implement the provisions of
30 this section and to administer the allocation of tax credits issued for
31 qualified equity investments under this section, which must be
32 conducted on a first-come, first-served basis.

33 NEW SECTION. **Sec. 2.** This act may be known and cited as the
34 "Washington state new markets development program".

1 NEW SECTION. **Sec. 3.** This act expires July 1, 2012.

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